21 December 2023

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**EMMA STEWART**

**Date of hearing:** 8 December 2023

**Panel:** Judge John Bowman (Chairperson).

**Appearances:** Mr Adrian Anderson instructed by Mr Andrew Cusumano appeared on behalf of the Stewards.

Mr Damien Sheales instructed by Mr Peter Morris represented Ms Emma Stewart.

**Charge:** Australian Harness Racing Rule (“AHRR”) 196B(1) states:

(1) A person shall not without the permission of the Stewards within one (1) clear day of the commencement of a race administer, attempt to administer or cause to be administered an injection to a horse nominated for that race.

**Particulars: Charge 1 AHRR 196B (1)**

That as the licensed trainer of SHOW ME HEAVEN engaged in Race 3 at the Maryborough Harness Racing meeting on Sunday 17 September 2023, that on Saturday 16 September 2023, within one (1) clear day of the commencement of that race, you attempted to administer an injection to that horse, by way of an intravenous drip.

**Charge 2 AHRR 196 (B)(1)**

That as the licensed trainer of ACT NOW engaged in Race 7 at the Maryborough Harness Racing meeting on Sunday 17 September 2023, that on Saturday 16 September 2023, within one (1) clear day of the commencement of that race, you administered an injection to that horse, by way of an intravenous drip.

**Charge 3 AHRR 190 (B)(1)**

That as a licensed trainer between the calendar year of 2022 and 21 September 2023, you failed to thoroughly maintain a logbook, listing and recording all details of treatments administered to horses in your care.

 **Plea:** Guilty

**DECISION – STAY APPLICATION**

In this matter, which came on at very short notice, Ms Emma Stewart is seeking a stay in relation to the operation of two concurrent periods of disqualification, each being of six months. They relate to the alleged breaches of AHRR 190B(1), which could be summarised as being administration offences.

The Charges arise from a Stewards’ inspection of Ms Stewart’s stables on 16 September 2023. When the Stewards arrived, two horses, Show Me Heaven and Act Now, were in the process of being administered a drip. Each was engaged to run at Maryborough the following day. For the purposes of the present application, there is no dispute concerning the administration being within 24 hours of the horses competing.

The Stewards charged Ms Stewart with the offences pursuant to AHRR 190B(1). She has pleaded guilty to the offences. As stated, concurrent periods of six month disqualifications were imposed. These would become operative virtually immediately. At least at this stage, she is still pleading guilty, but is contesting the severity of the penalty. One result of the penalty is that some 150 horses would need to be moved from her stables, apart from other consequences. Thus, she is seeking a stay of the operation of the penalties.

Mr Adrian Anderson of counsel appeared on behalf of the Stewards. Mr Damien Sheales of counsel appeared on behalf of Ms Stewart.

I say now that I prefer the submission advanced by Mr Sheales. This is a matter which, even at this crowded time of the year, could hopefully have been dealt with promptly. However, the Stewards are today asserting that the drips or drench contained a substance, which, whilst not enhancing or detracting from performance, in this case is nevertheless something that should be taken into account. In my view, the introduction of this factor, over and above the other relevant considerations, leads to my conclusion.

This factor obviously requires consideration and attention from counsel.

Further, the possible gravity of the Charges as such appears to be of a magnitude that could result in a penalty varying all the way from a fine to a disqualification.

The matter can be listed at comparatively short notice. However, apart from anything else, the assertion that the existence of an allegedly illegal and performance affecting substance is to be considered raises various considerations which may well require further investigation.

Further, the impact of the immediate operation of the finding of disqualification seems to me to be of a magnitude that far outweighs the argument advanced on behalf of the Stewards.

This matter, now not simple but urgent, has its complications. Further reasons may or may not be added to this Ruling after I have had the opportunity of further consideration, but I can assure all concerned that the conclusion will remain the same.

A stay is granted. I shall hear counsel as to the wording to be adopted.

**ORDERS**

1. The Stay Application is granted.

2. The appeal is adjourned to a date to be fixed.

3. Liberty to apply is reserved.

4. A directions hearing has been set down as follows:

**DIRECTIONS HEARING**

**DATE:** Monday, 29 January 2024

**START TIME:** 9.30 AM

**VENUE:** Audio link (Microsoft Teams)

**VRT PANEL:** Judge John Bowman (Chairperson)

Mark Howard

Registrar, Victorian Racing Tribunal